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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN E. SCHIER

Appeal 2009-007378
Application 09/737,679
Technology Center 2400

Before JOESPH L. DIXON, LANCE LEONARD BARRY,
and JAY P. LUCAS *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-4, 6-14, 19-31, and 34-39.
The Appellant appeals therefrom under 35 U.S.C. § 134(a). We have
jurisdiction under 35 U.S.C. § 6(b).

INVENTION

The Appellant describes the invention at issue on appeal as follows.

[A] method for providing a secure operating environment for a network accessible system is disclosed. The method includes accessing a delay timer having a delay time interval operably coupled to a communication module. The delay time interval may be compared to activity operably associated with the system communicating with the network. The communication module may be enabled in response to the comparison and in one form may be isolated if the communication port remains idle for a time period greater than the delay time interval.

(Abstract, ll. 4-14.)

ILLUSTRATIVE CLAIM

1. A method for providing a secure operating environment for a network accessible system comprising:
 - accessing a communication module, the communication module including a delay timer, the delay timer including a delay time interval;
 - comparing the delay time interval to an activity associated with the system communicating with the network, the activity being any communication between the system and the network; and
 - isolating the communication module and the delay timer from the network based on the comparison without terminating all power supplied to the communication module.

REJECTIONS

Claims 1-4, 6-14, 19-31, and 34-36 stand rejected under 35 U.S.C. § 112, ¶ 1, as lacking an adequate written description.

Claims 1-4, 6-9, 11, 19, 21, 24, 25, 28, 30, 31, and 34-36 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,892,901 ("Landwehr").

Claims 37-39 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,084,877 ("Netravali").

Claims 10, 20, and 27 stand rejected under § 103(a) as being unpatentable over Landwehr; U.S. Patent No. 6,185,616 ("Namma"); and U.S. Patent No. 6,249,681 B1 ("Virtanen").

Claims 12-14, 22, and 23 stand rejected under § 103(a) as being unpatentable over Landwehr; Namma; and U.S. Patent No. 6,249,681 B1 ("Virtanen").

Claim 26 stand rejected under § 103(a) as being unpatentable over Landwehr and Virtanen.

Claim 29 stand rejected under § 103(a) as being unpatentable over Landwehr and U. S. Patent No. 5,495,480 ("Yoshida").

REJECTION UNDER § 112, ¶ 1

The **issue** before us is whether the Examiner erred in finding that the phrase "the communication module including a delay timer" of independent claims 1, 19, and 24; the phrase "isolating . . . the delay timer" of independent claim 1; and the phrase "isolate . . . the delay timer" of independent claim 19 lack an adequate written description.¹

¹ The Examiner also finds that the phrase "isolating the delay timer" in independent claim 24 "remains unsupported by the specification." (Ans. 3.) Claim 24, however, omits the phrase.

FINDINGS OF FACT

The phrases at issue appear in the following limitations of claim 1, 19, and 24.

1. A method for providing a secure operating environment for a network accessible system comprising:
accessing a communication module, *the communication module including a delay timer*, the delay timer including a delay time interval;
...
isolating the communication module and *the delay timer* .
...

19. A medium comprising encoded logic for providing a secure operating environment operable to:
access a communication module, *the communication module including a delay timer*, the delay timer including a delay time interval;
...
isolate the communication module and *the delay timer* . .
..

24. A device operable to provide a secure operating environment for accessing a network comprising:
a communication module operable to communicate information via the network;
the communication module including a delay timer

(Emphases added.)

ANALYSIS

The Examiner finds that "'the communication module including a delay timer' . . . remains unsupported by the specification," (Ans. 4), and that, therefore, "'isolating the delay timer' . . . remains unsupported by the specification" (*id.* at 3).

"[C]ompliance with the 'written description' requirement of § 112 is a question of fact. . . ." *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563 (Fed. Cir. 1991) (citing *In re Gosteli*, 872 F.2d 1008, 1012 (Fed. Cir. 1989); *Utter v. Hiraga*, 845 F.2d 993, 998 (Fed. Cir. 1988)). A written "description must 'clearly allow persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed.'" *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc) (quoting *Vas-Cath*, 935 F.2d at 1563). "In other words, the test for sufficiency is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date." *Id.* (citing *Vas-Cath*, 935 F.2d at 1563).

Here, we agree with the Appellant that "[p]age 7, lines 29-31 of the Specification states that '**[c]ommunication module 101 includes . . . a delay timer 103 that includes a delay time interval**' (emphasis added)" (Br. 13.) This statement reasonably conveys to those skilled in the art that the Appellant had possession of the verbatim claimed subject matter as of the filing date of his application.

The Examiner does not contest that the originally filed disclosure provides adequate support for isolating the communication module. Because the communication module includes the delay timer, we agree with the Appellant that the same disclosure provides adequate support for isolating the timer.

Therefore, we **conclude** that the Examiner erred in finding that the phrase "the communication module including a delay timer" of independent claims 1, 19, and 24; the phrase "isolating . . . the delay timer" of

independent claim 1; and the phrase "isolate . . . the delay timer" of independent claim 19 lack an adequate written description.

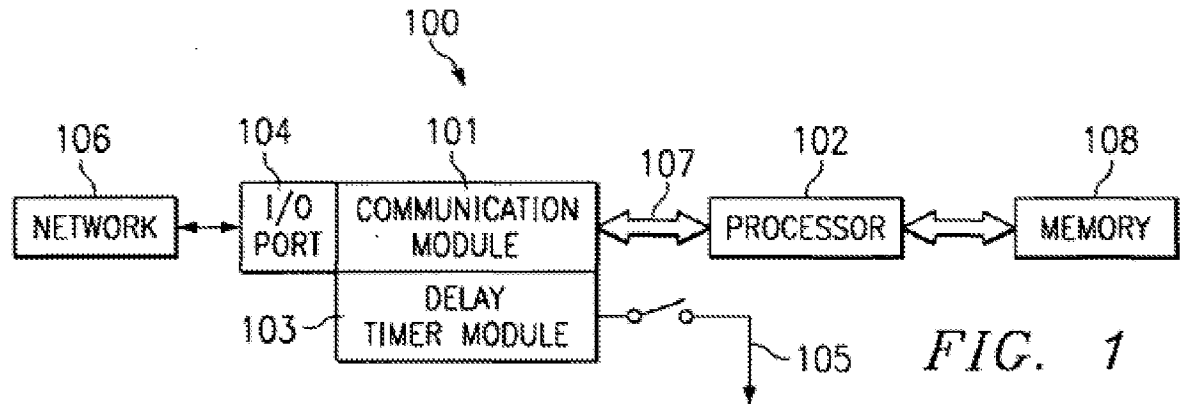
REJECTIONS UNDER § 102(B)

Based on the Appellant's arguments, we will decide the appeal of claims 1-4, 6-9, 11, 19, 21, 24, 25, 28, 30, and 31 on the basis of claim 1 alone; the appeal of claims 34-36 separately; and the appeal of claims 37-39 on the basis of claim 37 alone. *See* 37 C.F.R. § 41.37(c)(1)(vii).

The **issues** before us are (1) whether the Examiner erred in finding that Landwehr discloses a "communication module including a delay timer," as required by representative claim 1; (2) whether the Examiner erred in finding that Landwehr discloses a "network implement[ing] a TCP/IP transport language protocol," as required by claim 34-36; and (3) whether the Examiner erred in finding that Netravali discloses "isolating [a] communication module," as required by representative claim 37.

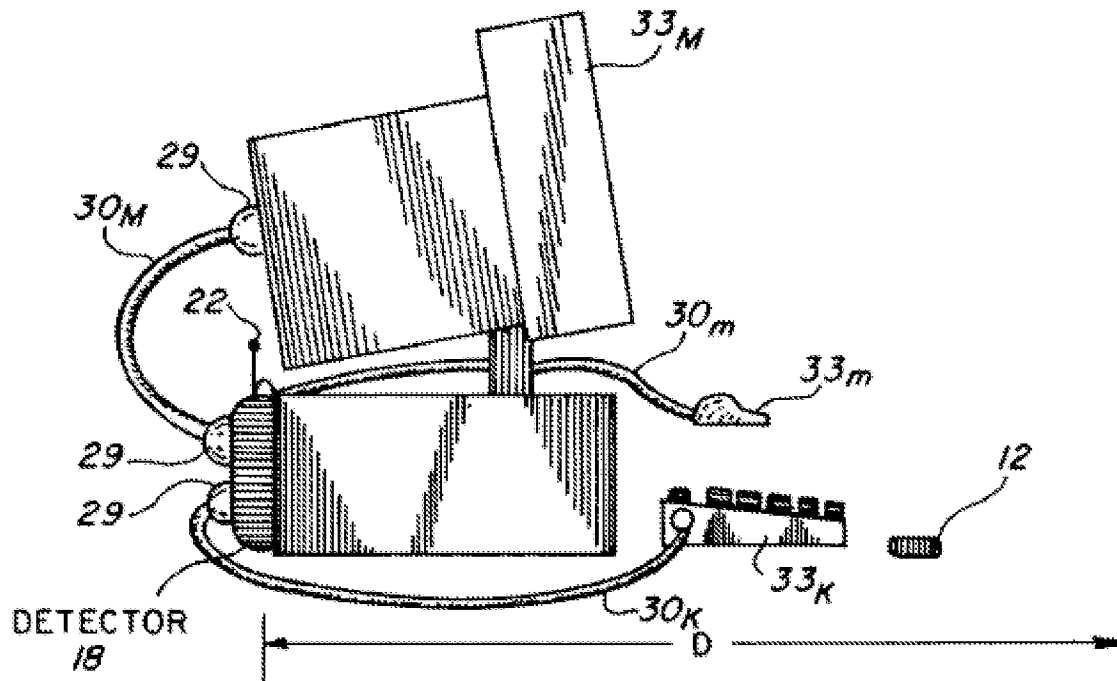
FINDINGS OF FACT

The Appellant's Figure 1 follows.



"FIGURE 1 illustrates a device for providing a secure operating environment for a computer system." (Spec. 7.)

Figure 3 of Landwehr follows.



"FIG. 3 is a schematic drawing illustrating an embodiment of the invention adapted for use with a personal computer, computer workstation, and the like." (Col. 2, ll. 34-36.)

ANALYSIS

We address the aforementioned issues *seriatim*.

Representative Claim 1

The Appellant argues that "[t]he Final Office Action alleges that the delay timer is part of the system that is isolated in *Landwehr*, but this is incorrect. Instead, Column 5, lines 29-34 of *Landwehr* **identifies the delay timer as being part of detector 18 . . .**" (Br. 15.)

"[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000).

Here, claim 1 recites in pertinent part the following limitations: "communication module including a delay timer." Figure 1 of the Appellant's Specification, reproduced *supra*, shows that the delay timer 103 can be connected to the communication module 101 to be "included" therein as claimed.

For its part, Figure 3 of *Landwehr*, reproduced *supra*, shows "circuit 28 [a]s a personal computer/work station (for simplicity, hereafter 'computer')" (Col. 3, l. 67 – col. 4, l. 1.) It is uncontested that the computer constitutes a communication module. The same Figure shows a detector 18 connected to the computer. As aforementioned, the Appellant admits that *Landwehr* discloses its delay timer as part of the detector.

Because the reference's delay timer is part of the detector, and the detector is connected to the computer, which constitutes a communication module, we find that the delay timer is included in the communication module.

Alternatively, Landwehr 's computer and detector collectively constitute the claimed "communication module including a delay timer."

Therefore, we **conclude** that the Examiner did not err in finding that Landwehr discloses a "communication module including a delay timer," as required by representative claim 1.

Claim 34-36

The Examiner finds that "Landwehr teaches wherein the network implements a TCP/IP transport language protocol (col.2 line 61 thru col.3 line 7)." (Ans. 7.)

"It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim, and that anticipation is a fact question" *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)).

Here, we agree with the Appellant that "[t]he cited portion [of Landwehr] is completely devoid of any mention of a network implementing a TCP/IP language protocol" (Br. 16.)

Therefore, we **conclude** that the Examiner erred in finding that Landwehr discloses a "network implement[ing] a TCP/IP transport language protocol," as required by claim 34-36.

Representative Claim 37

"It is not the function of [the U.S. Court of Appeals for the Federal Circuit] to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art." *In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991). "Similarly, it is not the function of this Board to examine claims in greater detail than argued by an appellant, looking for distinctions over the prior art." *Ex Parte Shen*, No. 2008-0418, 2008 WL 4105791 at * 9 (BPAI Sep. 4, 2008).

Here, the Examiner makes the following "specific fact finding," *Ex parte Belinne*, No. 2009-004693, 2009 WL 2477843, at *4 (BPAI Aug. 10, 2009) (informative), regarding Netravali.

Within lines 47-50 of column 7, Netravali provides yet another example of an isolation with his description of the use of a "DISC" state when a packet has not been received within a particular period of time, a state wherein operations are disconnected. Last but not least, Netravali discloses in lines 20-24 of column 8 the use of a timer on the interval between states transmissions by the transmitter in order that the system may enter the DISC state and cease operations when a packet has not been sent within a predetermined time interval. There is no question that each of these sections within the reference discloses a means of "isolation."

(Ans. 18.)

For his part, the Appellant does not address these findings. Instead, he makes the following argument.

Column 3, lines 48-51 of *Netravali* states that a wait indicator is set at the transmitter after a block is retransmitted "to prevent further retransmissions until the retransmitted block has sufficient time to be received and sufficient time to acknowledge the reception." Therefore, even assuming for the

sake of argument that *Netravali* discloses a wait indicator, *Netravali* does not teach or suggest **isolating** the receiver **because the receiver of *Netravali* continues to receive retransmitted blocks of data packets while the transmitter awaits acknowledgement.**

(Br. 14-15.)

"Arguing about different parts of the reference that those aforementioned 'do[es] not ... explain why the Examiner's explicit fact finding is in error.'" *Ex parte Nanja*, 2011 WL 1826811, at *3 (BPAI May 9, 2011)(quoting *Belinne*, at *4.). Therefore, we **conclude** that the Examiner did not err in finding that *Netravali* discloses "isolating [a] communication module," as required by representative claim 37.

REJECTIONS UNDER § 103(A)

The **issues** before us are (1) whether the Examiner erred in finding that claims 10, 20, and 27 would have been obvious; (2) whether the Examiner erred in combining teachings from Landwehr and Namma to reject claims 12-14, 22, and 23; and (3) whether the Examiner erred in finding that claims 26 and 29 would have been obvious.

ANALYSIS

We address the aforementioned issues *seriatim*.

Claims 10, 20, and 27

"[I]t is not the function of this Board to examine claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art." *Ex parte Post*, No. 2005-2042, 2006 WL 1665399 at *4

(BPAI 2006). Here, the Appellant does not address the rejection of claims 10, 20, and 27. We decline to examine the claims *sua sponte*, looking for nonobvious distinctions over the prior art." Therefore, we summarily **conclude** that the Examiner did not err in finding that claims 10, 20, and 27 would have been obvious.

Claims 12-14, 22, and 23

The Examiner finds makes the following conclusion and finding.

It would have been obvious to one of ordinary skill in the art to combine Lan[d]wehr's secure identification system with Namma's teaching of removing data associated with communication connection in order to provide the improved method of disconnecting communication between clients and servers (Namma col.1 lines 52-54; col.6 lines 1-9).

(Ans. 10-11.)

The presence or absence of a reason "to combine references in an obviousness determination is a pure question of fact." *In re Gartside*, 203 F.3d 1305, 1316 (Fed. Cir. 2000) (citation omitted). "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (citing *In re Lee*, 277 F.3d 1338, 1343-46 (Fed. Cir. 2002); *In re Rouffet*, 149 F.3d 1350, 1355-59 (Fed. Cir. 1998)). "To facilitate review, this analysis should be made explicit." *KSR Int'l v. Teleflex Inc.*, 550 U.S. 398, 401 (2007).

Here, the Examiner has not shown that Landwehr features clients and servers that would have benefited from Namma's improved method of disconnecting communication between clients and servers. Absent such an explicit showing, the Examiner's reason for combining amounts to impermissible hindsight. We agree with the Appellant argues that "this type of hindsight analysis, using Appellant's claims as a roadmap for summarizing references . . . is impermissible." (Br. 17.) Therefore, we **conclude** that the Examiner erred in combining teachings from Landwehr and Namma to reject claims 12-14, 22, and 23.

Claims 26 and 29

Rather than arguing the rejections of claims 26 and 29 separately, the Appellant relies on the aforementioned argument for claim 1, which was unpersuasive. Therefore, we **conclude** that the Examiner did not err in finding that claims 26 and 29 would have been obvious.

DECISION

We reverse the rejection of claims 1-4, 6-14, 19-31, and 34-36 under § 112, ¶ 1. We also reverse the rejection of claims 34-36 under § 102(b) and the rejection of claims 12-14, 22, and 23 under § 103(a).

We affirm the rejections of claims 1 and 37 under § 102(b) and those of claims 2-4, 6-9, 11, 19, 21, 24, 25, 28, 30, 31, 38, and 39, which fall therewith. We also affirm the rejections of claims 10, 20, 26, 27 and 29 under § 103(a).

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No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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